

***United States Court of Appeals
for the Second Circuit***



APPENDIX

DECEMBER-18, 1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
LOUIS TEPLITSKY, :
:
Plaintiff, : 67 Civil 1019
:
-against- : Cal. 4
:
BUREAU OF COMPENSATION : No. 583
U. S. DEPARTMENT OF LABOR :
:
-and- : NOTICE OF MOTION
:
UNITED STATES OF AMERICA, :
:
Defendants. :
-----x

S I R:

PLEASE TAKE NOTICE, that upon the pleadings and prior proceedings herein, and upon the annexed exhibits and affidavits of PETER MARTIN KLEIN, JOHN D. McLELLAN, JR., BERTRAM JUDEM, ROBERT DRAVIN, NICHOLAS J. GALLUZZI and THOMAS J. BOLOGNA, the undersigned will move this Court at a Motion Part thereof, to be held at the United States Court House, Foley Square, Borough of Manhattan, New York, New York, on Tuesday, the 2nd day of January 1968, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting summary judgment, in favor of defendants against plaintiff dismissing the complaint and summons herein and granting declaratory judgment

ment in favor of the United States of America on the counter-
claim.

Dated: New York, N. Y.

December 18, 1967

DECEMBER-18-1967

Yours, etc.

ROBERT M. MORGENTHAU
United States Attorney
LOUIS E. CRECO
Attorney in Charge
Admiralty & Shipping
Section
Department of Justice
42 Broadway, Room 600
New York, N. Y. 10004
Attorneys for Defendants

By: Peter Martin Klein
Peter Martin Klein

Date May 3, 1974
In Reply
Refer to C 4 216 835
TEPLITSKY, Louis
306/21B4

VETERANS ADMINISTRATION
REGIONAL OFFICE
252 SEVENTH AVENUE
NEW YORK, NEW YORK 10001



Honorable James L. Buckley
United States Senator
110 East 45th Street
New York, NY 10017

MAY 3-1974

Dear Senator Buckley:

Mr. Teplitsky's service-connected nervous condition is independently evaluated at 100% disabling for symptoms and findings which are directly attributable to his military service, irrespective of the findings of the psychiatric examination conducted by the Bureau of Employees Compensation on December 3, 1966. The record indicates that the veteran's nervous condition was considered to be 50% disabling for many years prior to the date of the On-the-Job injury to his groin, which occurred on December 11, 1963.

The Veterans Administration has completed all necessary action on Mr. Teplitsky's case and granted him maximum disability benefits. Any future correspondence relevant to this matter should be directed to the United States Department of Labor, Bureau of Employees Compensation, 1515 Broadway, New York, New York 10036, as the veteran's appellate action was based on a decision rendered by that office.

Mr. Teplitsky has sought Senator Javits' assistance and a similar letter has been sent to him.

Your interest in the veteran's welfare is appreciated.

Sincerely yours,

P. M. Nugent
P.M. NUGENT
Director

DECEMBER
8-1967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DECEMBER

- 8, 1967 -

- 1967 -

-----X
LOUIS TEPLITSKY,

Plaintiff,

-against-

BUREAU OF COMPENSATION
U. S. DEPARTMENT OF LABOR

-and-

UNITED STATES OF AMERICA,

Defendants.
-----X

67 Civil 1019

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BERTRAM JUDEM, being duly sworn, deposes and says:

1. I am Chief, Rating Section II, Adjudication Division, New York Regional Office, Veterans Administration, with offices at 252 Seventh Avenue, New York, N. Y.

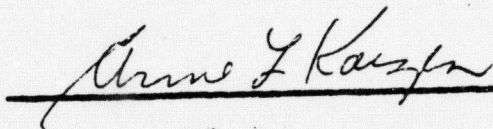
2. I am personally familiar with the Veterans Administration case history of Louis Teplitsky, claimant C-04216835, and make this affidavit in support of the motions of defendants for dismissal of plaintiff's action and for judgment on the counterclaim of defendants.

3. Mr. Teplitsky is a veteran of World War II Army service from October 30, 1942 through May 30, 1943, when he was given an honorable discharge as not adaptable for military service. Army records show that on April 24, 1943 he had been reclassified from "general service" to "limited service" by reason of "psychoneurosis, severe, anxiety

18. The documents from the Veterans Administration file on plaintiff as a claimant for benefits from this Administration which have been copied as exhibits to this affidavit, and the affidavit itself, are offered to the Court solely for the purpose of establishing the factual background to plaintiff's allegations in this suit. The actions which were taken by the Veterans Administration are, by statute, made final and non-reviewable, and the offering of this affidavit is not intended as a consent to judicial review of the Administration's actions.


BERTRAM JUDEM

Sworn to before me
by Bertram Judem this
8th day of
December, 1967.



NOTARY PUBLIC
No. 24-7140925
Notary Expires March 30, 1968

May 3, 1974

NEW YORK, NEW YORK 10001

C 4 216 835
TEPLITSKY, Louis
306/21B4

MAY 3 1974

Honorable Jacob K. Javits
United States Senator
110 East 45th Street
New York, NY 10017

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Mr. Teplitsky has sought Senator Buckley's assistance and a similar letter has been sent to him.

Your interest in the veteran's welfare is appreciated.

Sincerely yours,

P.M. NUGENT
Director

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LOUIS TEPLITSKY

Plaintiff

v.

BUREAU OF COMPENSATION
U. S. DEPARTMENT OF LABOR

and

UNITED STATES OF AMERICA

Defendants

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss

DECEMBER-13, 1967

67 CIVIL 1019

AFFIDAVIT IN SUPPORT OF
THE DEFENDANTS' MOTION

JOHN D. McLELLAN, JR., being duly sworn, deposes and
says:

1. I am the Deputy Commissioner in Charge, New York
Region, Bureau of Employees' Compensation, U. S. Department of
Labor. My offices are at 321 West 44th Street, New York, N. Y.
10036.

2. I am personally familiar with the decision reached
by the BEC on the compensation claim of Louis Teplitsky under
the Federal Employees' Compensation Act, 5 U.S.C. 791 et seq.,
arising from an on-the-job injury received on December 11, 1963.
In preparing this affidavit I have refreshed my mind by reviewing
the BEC file on the claim.

3. This affidavit is made in support of the motions
of defendants for summary judgment dismissing the complaint and
granting declaratory judgment for defendants against plaintiff.

4. Plaintiff, Mr. Teplitsky, was employed by the
Post Office Department as an 120-day temporary mail handler
during the 1963 Christmas Season, and was assigned to work at
the Morgan Post Office in the City of New York. At approximately
noon on December 11, 1963 he informed his supervisor that at about
10:30 A.M. that morning he had felt pain in his left groin while
lifting a mail sack.

10. Mr. Teplitsky had been given extensions of his temporary appointment by the Post Office Department, but was placed on leave without pay as of March 8, 1964, the day when he became eligible for disability payments under F.E.C.A.

11. At his April 9th examination, Mr. Teplitsky's complaint of pain was found to still be present and he was found disabled from work. He was given an April 13, 1964 appointment at the Surgical Clinic, P.H.S. Hospital, Staten Island.

12. Mr. Teplitsky's Post Office Department appointment terminated at the close of business April 15, 1964.

13. During the course of 1964, Mr. Teplitsky was seen by various P.H.S. physicians and surgeons and eventually found fit for light duty provided he did not lift more than 25 pounds in weight. The BEC terminated Mr. Teplitsky's total disability benefits and asked him to provide information needed to calculate partial disability benefits. Among the items of information then reported by Mr. Teplitsky was that he was receiving disability compensation of \$107.00 a month from the Veterans Administration for a service-connected "emotional" disability [Exhibit 2]. On February 3, 1965, the Veterans Administration was asked to provide BEC with a report on Mr. Teplitsky's disability.

14. Mr. Teplitsky's responses to BEC's inquiries also included the information indicating that he had been a seasonal employee of the Idle Beach Hotel on Long Island, for at least ten years, as head bus boy and as a bar waiter, but that he had lost his job with a change in hotel ownership.

15. On June 17, 1965, BEC advised Mr. Teplitsky that his skills, experience and then physical condition qualified him for work as a bar waiter (which is considered light work) with an earning capacity of \$60.00 per week. That amount was found to be \$16.96 less than his pay rate at the time of the injury, (and partial disability benefits were awarded accordingly, from November 10, 1964, the day "after" the end of total disability, through June 9, 1965. [Exhibit 3])

23. On January 13, 1966 Mr. Teplitsky was advised by letter that his claim was approved for inguinal strain, that he had other disabilities not accepted by the Bureau and not related to the injury of December 11, 1963, and that he was not totally disabled.

[Exhibit 10]

24. On January 20, 1966 Mr. Teplitsky requested the Employees' Compensation Appeals Board to review the January 19 decision not accepting his 100% nervous condition disability claim. [Exhibit 11]

25. On January 21, 1966 Mr. Teplitsky wrote a letter to the Employees' Compensation Appeals Board asking their decision on his claim and forwarding the Appeal. [Exhibit 12]

26. On February 13, 1966 Mr. Teplitsky again wrote to the Employees' Compensation Appeals Board. This time he requested permission to withdraw his appeal and present new evidence to BEC.

[Exhibit 13] He stated that if his new evidence were rejected by BEC, he would appeal again. On February 17, 1966 the request was granted. [Exhibit 14]

27. Mr. Teplitsky's new evidence consisted of reports from four private physicians and three private psychiatrists. [Exhibits 15-21]
The reports of the physicians were that they found no physical injuries but could not rule out the possibility of actual physical pain and possible nerve injury. The psychiatrists reported that pain and anxiety had caused a marked deterioration in Mr. Teplitsky's emotional condition.

28. BEC had previously retained an independent surgical consultant to examine Mr. Teplitsky and offer an opinion on the claimed physical injury. The independent expert reported a lack of evidence of actual physical injury at the time of examinations and that Mr. Teplitsky showed tenderness and sensitivity to touch in the left inguinal area only when he was aware that the examiner was testing him for such tenderness and sensitivity, but did not react when caught unawares.

33. Notice of the BEC decision and action was sent to Mr. Teplitsky by letter on December 27, 1966. [Exhibit 24]

34. Mr. Teplitsky also was advised in the letter that he would shortly receive a check for \$912.00 representing \$1,403.18 total disability benefits for the period of November 10, 1964 through September 9, 1965 less \$491.18 partial disability benefits already paid for that period. A check for \$912.00 was subsequently mailed to Mr. Teplitsky.

35. BEC had determined that the Veterans Administration's increase of Mr. Teplitsky's disability rating from 50% to 100% had been based upon conclusions that aggravation of the disability to 100% had arisen after the Post Office injury. Since BEC had determined that the same disabling condition was compensable under the F.E.C.A. and had been caused by the same injury, it advised Mr. Teplitsky, in the December 27, 1966 letter, that he would have to make an election between the two benefits in accordance with Section 7 of the Compensation Act.

36. BEC and the Veterans Administration have agreed upon procedures to be followed in implementation of Section 7 of the Compensation Act, now U.S.C. 8116. When a veteran's service-connected disabilities are aggravated by an injury which is civilian-employment related and results in FECA benefits for the disability as aggravated and the Veterans Administration has increased the veteran's rate of compensation as a result of the aggravation, he must elect between the F.E.C.A. benefits and the concurrent increase in veteran benefits. Conversely, if there is no increase in veteran's benefits while F.E.C.A. benefits are concurrently payable there is not any need for an election. When an election is necessary, BEC will notify the claimant of the need. If the election is not made within 30 days of the notice, F.E.C.A. compensation is suspended and veterans benefits continue to be paid.

37. In Mr. Teplitsky's case a Veterans Administration 50% disability benefit of \$107.00 per month was in effect on December 11, 1963 and remained in effect until September 10, 1965, when it was increased to 100% and \$250.00 per month; an increase of \$143.00. Mr. Teplitsky was subsequently determined to have been entitled to 100% disability payments under F.E.C.A. from March 8, 1964. The F.E.C.A. benefit is \$209.96

32, Upon review of all the evidence submitted by Mr. Teplitsky, including evidence submitted after May 26, 1966, plus the reports of the Government's experts and the independent experts retained to advise BEC, it was determined that Mr. Teplitsky has no permanent physical inguinal damage resulting from the December 11, 1963 incident, but that the incident aggravated his preexisting and partially disabling psychological disorder, to the point that it became totally disabling. It was determined that the psychological condition, and not any physical condition, was the ultimate and actual disabling factor in Mr. Teplitsky's case. BEC restored Mr. Teplitsky's total disability benefits retroactive to November 10, 1964 and through September 9, 1965.

7

John D. McLellan Jr.
JOHN D. McLELLAN, JR.
DEPUTY COMMISSIONER

December 13, 1967
DATE

Sworn to before me by John D. McLellan, Jr.,

this 13 day of December 1967.

Morris Langholtz

MORRIS LANGHOLTZ
Notary Public, State of New York
No. 41-2253200 - Queens County
Cert. filed in New York County
Term Expires March 30, 1969

- DECEMBER -
13-1967



